

District Court, Fremont County, COLORADO  136 Justice Center Road Canon City, Colorado, 82241 (719) 269-0100	DATE FILED: April 13, 2023 12:17 PM
<b>Plaintiff(s): THE PEOPLE OF THE STATE OF COLORADO,</b>  v.  <b>Defendant(s): MORPHEW, BARRY LEE</b>	<b>▲ COURT USE ONLY ▲</b> Case No.: 2022CR47  Division: 1
<b>ORDER ON MOTIONS TO LIMIT PUBLIC ACCESS</b> <b>[D-71], [D-80a], [D-95], [D-98], [D-99a] and the People's Motion filed April 4, 2022</b>	

The Court has reviewed six pending Motions to Limit Public Access filed on the following dates in 2022; March 27, April 4, April 5, April 7, April 13 and April 15. The Court issues the following Order denying the Motions.

### Background

All of the Motions were filed by Mr. Morphew with the exception of the Motion filed April 4, which was filed by the People. No responses objecting to the Motions were filed by the opposing party and no redacted versions of the subject content were filed by the moving party of any Motion. The Motions were all filed pursuant to Crim.P. Rule 55.1(a)(2) and seek limitation by the public to access of records previously filed.

### Rule of Law

In a criminal case, court records are “presumed to be accessible to the public.” Crim. P. 55.1(a). To deny the public access to a court record or any part of a court record, the Court must follow the procedures contained in Crim. P. 55.1 unless the record is inaccessible to the public pursuant to other statute, rule, regulation or Chief Justice Directive. *Id.*

Pursuant to Rule 55.1(a)(2), a party may request the Court to limit public access to a record previously filed or to any part of such record by making it inaccessible or allowing only a redacted copy of the record to be made accessible to the public. To request such limitation, the party must identify the respective filing and serve notice on the opposing party who can then file an objection.

The Court is not to grant any request to limit public access to any part of a court record unless it issues a written order in which it:

(I) specifically identifies one or more substantial interests served by making the court record inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public;

(II) finds that no less restrictive means than making the record inaccessible to the public or allowing only a redacted copy of it to be accessible to the public exists to achieve or protect any substantial interests identified; and

(III) concludes that any substantial interests identified override the presumptive public access to the court record or to an unredacted copy of it.

Rule 55.1(6). Any order limiting public access shall identify a “date or event certain by which the order will expire.” Rule 55.1(7).

### **Analysis**

Mr. Morphew’s Motions (a-h) and the People’s Motion (i) seek to limit access to the following court records:

- a. Notice of People’s Intent to Introduce Statements Pursuant to CRE 807 and Section 13-25-139, C.R.S., and Exhibits 1 and 2 filed with that motion [D-71].
- b. Mr. Morphew’s Motion *in limine* to Exclude Evidence about Radio [D-80].
- c. Attachment 1 to Notice of Defense Proposed Jury Questionnaire [D-93].
- d. Attachment 1 to Submission of Proposed Orientation for Jurors [D-94].
- e. The attachment to the People’s Proposed Juror Questionnaire (filed in Chaffee County case 21CR78) [P40].
- f. Mr. Morphew’s Motion to Compel Prosecution for Jury Tampering [D-96] and its attachments and proposed orders.
- g. Mr. Morphew’s Motion for Orders to Prevent Jury Tampering and Protect Mr. Morphew’s Right to a Fair Trial [D-97] and its attachments and proposed orders.
- h. The attachment in Mr. Morphew’s Objection to any Set-Aside and Follow-the-Law Questions in the Jury Questionnaire [D-99].
- i. Exhibits 1-7a of the People’s Motion to Reconsider Discovery Sanctions, specifically personal information and phone numbers of witnesses in the case.

Mr. Morphew’s Motions cites his right to a fair trial as a substantial interest justifying limitation to the public’s access. He cites to the proximity of the trial, the fact that juror summons have gone out and the substantial risk of tainting the jury pool thereby affecting the ability of the Court to empanel a fair and impartial jury and maintain its adherence to his right to a fair trial. Mr. Morphew argues that these substantial interests would be impaired if it became impossible to seat a jury as such situation would cause a mistrial, delay or another change in venue. Mr. Morphew maintains that these interests override the public’s right to access and that limiting its access

prevents dissemination of this material “at this critical point prior to trial”. Motions, ¶¶6.

Additionally, Mr. Morphew argues that, with respect to juror questionnaires, the documents could be edited prior to trial, causing additional concern with their release to the public. Mot., Apr. 7, ¶6.

In the People’s Motion, they maintain that release of personal information and phone numbers of witnesses outweighs the public’s access to such information.

Neither party requested the Court to limit the public’s access to the information past the anticipated June 3, 2022, conclusion of Mr. Morphew’s trial.

The Court notes that on April 19, 2022, this matter was dismissed without prejudice on the People’s Motion. Also on this date, the jury panel was released. Minute Order, April 19, 2022. While it may be legally possible for Mr. Morphew to be tried in this matter, whether and when he will be tried is a matter of speculation. The arguments advanced by Mr. Morphew that relate to the proximity of trial and the ability to empanel a jury are significantly weakened by the dismissal of charges. The same conclusion is reached with respect to his argument that his right to a fair trial will be damaged by release of the records. Crim. P. 55.1 requires a court to indicate a date or event certain when its limiting order is to expire. This Court cannot fashion such a date or event certain. Even an attempt to impose a delay in the release of the records in order to “wait and see” if Mr. Morphew is prosecuted a second time would be speculative. It would also subject to later argument that the Court should continue to extend such “wait and see” period. Such a decision would negate the Rule’s clear language demanding that any orders limiting public access not be indefinite. The Court cannot identify any substantial interests that would allow such a deviation from the Rule. Without a pending case and a looming trial date, the substantial interests cited by Mr. Morphew fail to override the presumptive public access to the court records.

The same conclusion is reached with respect to the People’s Motion.

The Court notes that suppression of this information may be achieved through application of Chief Justice Directive 05-01 or other remedies available to the parties. The Court orders the Clerk of Court, consistent with its usual practice, to review the documents identified in the Motions in a suppressed or protected security level and that if any document or part thereof must be protected or suppressed pursuant to CJD 05-01, that the Clerk assign the appropriate security level.

### **Conclusion**

1. Mr. Morphew’s Motion to Limit Public Access filed March 27, 2022, is DENIED.
2. Mr. Morphew’s Motion to Limit Public Access filed April 5, 2022, is DENIED.
3. Mr. Morphew’s Motion to Limit Public Access filed April 7, 2022, is DENIED.

4. Mr. Morphew's Motion to Limit Public Access filed April 13, 2022, is DENIED.
5. Mr. Morphew's Motion to Limit Public Access filed April 15, 2022, is DENIED.
6. The People's Motion to Limit Public Access filed April 4, 2022, is DENIED.

IT IS SO ORDERED.

By the Court, this 13<sup>th</sup> day of April, 2023,  
/s/ Amanda Hunter, District Court Judge